

March 8, 2006

VIA ECFS

Marlene M. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte: WC Docket 05-261, WC Docket No. 04-313 and CC Docket No. 01-338**

Dear Ms. Dortch:

Attached for inclusion in the above referenced dockets in further support of Fones4All Corporation's ("Fones4All") Emergency Petition for Interim Waiver is the decision released today by Administrative Law Judge Karen Jones Denying SBC California's Emergency Motion to Compel Transition.<sup>1</sup>

Today's decision serves to further substantiate the fact that despite the litany of "Who Shot John" excuses filed by AT&T (SBC California) on March 6 in the Labat Declaration in the above referenced dockets, Fones4All is not the only carrier suffering from SBC California's failure to implement a workable batch cut process in California. Rather, the fundamental problem with the spectacularly botched transition process in California is that SBC has failed to put into place the robust infrastructure (including ordering systems and account team support) that it represented in numerous filings to this Commission (and upon which the Commission relied in the TRRO decision<sup>2</sup>) that it had in place or was capable of putting in place in order to ensure a smooth transition.<sup>3</sup> The fact that SBC has failed to successfully convert in the last year

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<sup>1</sup> See *Administrative Law Judge's Ruling Denying SBC California's Emergency Motion to Compel UNE-P Transition, Application of Pacific Bell Telephone Company d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996* (Mar. 8, 2006) ("Decision Denying SBC Motion") available at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/54267.htm>.

<sup>2</sup> See *In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket NO. 01-338), *Order on Remand*, 20 FCC Rcd 2533 (2005) ("Triennial Review Remand Order" or "TRRO"), petitions for review pending, *Covad Communications Co. et al. v. FCC et al.* Nos. 05-1095 et al (D.C. Cir.).

<sup>3</sup> See TRRO, ¶ 211: "SBC's "Enhanced Daily Process" places no limitations on the number of local service requests that a competitive LEC may submit. Its "Defined Batch Process" allows competitive LECs to order up to

(or even in the last 3 months) the 100,000 UNE-P lines that gave rise to its “Emergency Motion to Compel” demonstrates the fallacy of its representations in the TRRO docket regarding its batch hot-cut capabilities.

The result is that CLECs in California now face, at a minimum, significant financial penalties, assuming that SBC automatically and seamlessly converts the existing UNE-P lines to resale on March 11. At worst, CLECs face significant customer disruptions, as carriers struggle to comply with SBC’s needlessly onerous ordering process, which refuses to allow carriers “migrate as-is” UNE-P customers to UNE-L, but instead requires each CLECs’ order to be submitted as a much more complicated and labor intensive “CLEC-to-CLEC conversion with change” even though the CLEC is staying the same and no change in the actual service configuration is being requested. This was chief among the reasons the California ALJ rejected SBC’s Motion:

...much of the delay in submitting service orders resulted from uncertainty, and that [CLECs] had no obligation to do anything until the TRO/TRRO Amendment was adopted three weeks ago. Another factor that has contributed substantially to transitioning delays has been SBC’s refusal to negotiate terms of commercial agreements for the provision of UNE-P replacement arrangements. Still another factor that has led to transitioning delays is SBC’s imposition of burdensome ordering processes for conversions from UNE-P to resale. Rather than allowing CLECs to submit simple ‘as-is’ migration requests, SBC has designed its OSS in a manner that requires every CLEC conversion order to be submitted as ‘CLEC-to-CLEC conversion with change’ even though the CLEC is staying the same and no change in the actual service configuration is being requested.<sup>4</sup>

In the face of SBC California’s failure to implement the tools that it represented to this Commission in the TRRO proceeding it had in place to allow it to complete “20-25 hot cuts per hour,” the Commission should grant Fones4All’s Emergency Petition for Interim Waiver in California and order SBC California to provide every available resource to complete the transition as quickly as possible, including ordering SBC to allow carriers to submit orders as “as

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100 hot cuts per day per central office with a standard provisioning interval under two weeks, resulting in 20-25 hot cuts per hour. A “Bulk Projects” process is available for projects with 100 or more lines.” (citations omitted).

<sup>4</sup> *Id.*

is" migration requests, and at the same time the Commission should order SBC to maintain existing UNE-P arrangements at existing prices until such time as the transition can be completed in order to disincent SBC from further slow-rolling the process in order to assess resale charges on the remaining UNE-P lines.

Sincerely,

A handwritten signature in cursive script, reading "Ross A. Buntrock". The signature is written in dark ink and is positioned above the printed name.

Ross A. Buntrock

KAJ/tcg 3/8/2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Bell Telephone Company  
d/b/a SBC California for Generic Proceeding to  
Implement Changes in Federal Unbundling Rules  
Under Sections 251 and 252 of the  
Telecommunications Act of 1996.

Application 05-07-024  
(Filed July 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING SBC CALIFORNIA'S EMERGENCY MOTION  
TO COMPEL UNE-P TRANSITION**

On February 10, 2006, SBC California (SBC) filed an emergency motion to compel the Competitive Local Exchange Carriers (CLECs) identified in Attachments A and B of the attached declaration of Roman Smith (Smith Decl.) to transition their embedded base of UNE-P lines to alternative arrangements by the March 11, 2006 deadline established by the Federal Communications Commission (FCC).

According to SBC, those CLECs fall into two categories. The first category, listed in the Smith Decl. consists of those CLECs that, as a practical matter, have done nothing to transition their embedded base of UNE-P lines. The second category, listed in Smith Decl. Attach. B, consists of those CLECs that have negotiated transition plans with SBC but that are not adhering to the terms of those plans. Together, those two categories of CLECs serve over 100,000 UNE-P lines in California.

SBC expresses concern that a large-scale migration in a compressed timeframe could strain and overwhelm its systems. SBC states that its Operation Support Systems are designed to handle a certain volume of service orders, plus “padding” in order to accommodate spikes in demand. However, if CLECs were to submit unusually large volumes of Local Service Requests (LSRs) to transition customers, the resulting service orders could exceed the capacity of SBC’s systems and cause them to shut down, and thus jeopardize service to millions of California customers.

A number of CLECs responded to SBC’s emergency motion: those included: California Catalog & Technology, Inc.; Telscape Communications, Inc.; U.S. Telepacific Corp.; Utility Telephone, Inc.; Wholesale Air-Time, Inc.; Symtelco, LLC; Fones4All Corp.; Call America, Inc.; Curatel, LLC; DMR Communications, Inc.; TCast Communications, Inc.; and Tri-M Communications, Inc. d/b/a TMC Communications. A response was also received from the California Association of Competitive Telecommunications Companies on behalf of its member company Telekenex.

The CLECs strongly rebut SBC’s assertions that the listed CLECs have done little or nothing to effect transition of their UNE-P customers by the March 11, 2006 deadline and cited a lack of cooperation and responsiveness from SBC. The following are some of the major allegations made by the CLECs. The CLECs point out that much of the delay in submitting service orders resulted from uncertainty, and that they had no obligation to do anything until the TRO/TRRO Amendment was adopted three weeks ago. Another factor that has contributed substantially to transitioning delays has been SBC’s refusal to negotiate terms of

commercial agreements for the provision of UNE-P replacement arrangements. Still another factor that has led to transitioning delays is SBC's imposition of burdensome ordering processes for conversions from UNE-P to resale. Rather than allowing CLECs to submit simple "as-is" migration requests, SBC has designed its OSS in a manner that requires every CLEC conversion order to be submitted as "CLEC-to-CLEC conversion with change" even though the CLEC is staying the same and no change in the actual service configuration is being requested. Several CLECs indicate that they had indeed submitted a transition plan and were in the process of implementing that plan. One CLEC describes SBC's delays in implementing a Batch Hot Cut contract with the CLEC. CLECs planning to transition to UNE-L point to lengthy lead times in getting collocation arrangements turned over to them.

The CLECs also assert that it is a fundamental policy of state law that a party seeking relief must come to the forum with "clean hands."<sup>1</sup> Where the party seeking relief is responsible, as the result of the party's own misconduct, for the circumstances giving rise to the claim, the doctrine of unclean hands is available to the other party as a defense.<sup>2</sup>

According to the CLECs, SBC's "unclean hands" in the matter of the transition away from the UNE-P comes in several forms. First, SBC has misrepresented Small CLECs' response to SBC's demands that they submit acceptable transition plans. Second, SBC has not maintained its ordering

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<sup>1</sup> "No one can take advantage of his own wrong." Cal. Civ. Code § 3517.

<sup>2</sup> See, e.g. *Unilogic, Inc. v. Burroughs* (1992) 10 Cal. App. 4<sup>th</sup> 612.

systems properly so that CLECs can obtain necessary information to submit valid orders, and has not worked those orders properly once submitted.

This is not a complaint case, and it is not my intention to determine where the fault lies. However, after reviewing SBC's motion and the CLECs' responses, I find that it is unlikely that the fault is all on the CLECs' side. Therefore, SBC's emergency motion to compel UNE-P conversion will be denied.

In the interest of facilitating the conversion of UNE-P lines before the March 11, 2006 deadline, I initiated a conference call on March 1, 2006, with SBC and interested CLECs to discuss what could be done to facilitate the transition. The CLECs indicated that those that had not provided SBC with a daily count of the number of service orders that they would be submitting between March 1 and March 10, 2006, would do so. I believe that this information will assist SBC to better manage the conversion process for multiple CLECs that are submitting orders.

**IT IS RULED** that SBC California's emergency motion to compel UNE-P transition is rejected.

Dated March 8, 2006, at San Francisco, California.

/s/ KAREN A. JONES  
Karen A. Jones  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying SBC California's Emergency Motion to Compel UNE-P Transition on all parties of record in this proceeding or their attorneys of record.

Dated March 8, 2006, at San Francisco, California.

TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.